

### REMARKS

This is a resubmission of Amendment "C" filed, February 27, 2007, in response to the Final Office Action mailed December 27, 2006. This Amendment is being filed without a petition requesting a three (3) month extension of time due to the response being timely filed, February 27, 2007, as discussed with Robert Beausoliel (the supervisor of record), on June 26, 2007. If, however, an extension of time is required, we respectfully request the extension of time and further request that the corresponding fee for the extension be charged to Deposit Account No.: 23-3178.

The response was previously filed After Final without an RCE inasmuch as no claim amendments were made and inasmuch as the previous rejection failed to assert or even address all of the limitations that were previously presented in the claims, as discussed during the interview. In particular, it was not even asserted that any reference or combination of references teaches or suggests the claim limitation comprising "selectively identifying an event that will prompt the consistency checking...".

The Applicants would, however, like to thank Examiner Mehrmanesh for the opportunity of an in-person interview on Feb. 9, 2007. We believe that the interview was very helpful in advancing prosecution of this patent application and the Applicants are very grateful for the examiner's time and attention to this matter.

The Office Action, mailed November 20, 2006, considered claims 1-40. Claims 1, 2, 12-18, and 22-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Koizumi et al., U.S. Patent No. 4,789,986 (filed Aug. 11, 1986) (hereinafter Koizumi) in view of McElroy et al., U.S. Patent No. 6,374,364 (filed Jan. 19, 1999) (hereinafter McElroy). Claims 4-11, 20-21, and 32-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Koizumi in view of McElroy and further in view of Choquier et al., U.S. Patent No. 5,951,694 (filed Feb. 3, 1997) (hereinafter Choquier). Claims 3, and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Koizumi in view of McElroy and in further view of Archibald et al., U.S. Patent No. 6,928,578 (filed May 10, 2001) (hereinafter Archibald).<sup>1</sup>

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly,

By this response, no claims have been amended, such that claims 1-40 remain pending. Claims 1, 17, 25, 32, 35 are the independent claims which remain at issue.

As reflected in the claims, the present invention is directed generally toward embodiments related to application instance consistency checking by selectively identifying and checking fields of application state information. Claim 1 recites, for instance, in combination with all the elements of the claim, a method including identifying a set of fields of state information which is a subset of all the information available for an application program instance. The method also identifies an event which will cause the fields to be checked for consistency. When a consistency management module determines that the event has occurred, the previously identified state information fields are then checked for consistency. Claim 17 recites a computer program product embodiment of the method recited in claim 1. Claim 25 recites, in combination with all the elements of the claim, a method similar to that recited in claim 1 but recited in "step for" language.

Claim 32 recites, in combination with all the elements of the claim, a method for the application program instance to control whether or not a consistency management module performs consistency checking. The method includes receiving a function call through an API from an application instance which indicates that an inconsistency has been found within selectively identified data fields. In response to such a function call, the state information for the application instance is set to reflect that the instance is in recovery mode. Claim 35 recites a computer program product embodiment of the method recited in claim 32.

As was discussed in the interview, the Applicants respectfully submit that the references cited in each of the rejections of the independent claims fail to teach or suggest the elements for which they are cited. As will be discussed below, in many instances the Examiner has cited only to figures within Koizumi which neither directly nor indirectly teach the recited claim elements against which they are cited. Accordingly, Applicants submit that the cited references fail to teach or suggest the claimed elements and, absent further explanation of any such teaching or suggestion, respectfully submit that the Examiner has not met her burden under MPEP § 2143 of showing that each and every element is taught or

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any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

suggested by the cited references and that there must be a reasonable chance of success in combining the references to produce the invention as claimed.<sup>2</sup>

Claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Koizumi in view of McElroy.<sup>3</sup> The Examiner cited Koizumi Fig's 4, 5, and 6 for teaching "an act of identifying a plurality of data fields of state information corresponding to the instance that are to be subject to consistency checking."<sup>4</sup> Koizumi Figure 4 shows a format of file edit data.<sup>5</sup> Koizumi Figure 5 shows a format of file edit initial data.<sup>6</sup> Koizumi Figure 6 shows a format of a file edit message.<sup>7</sup> The Applicant respectfully submits that the cited portion of Koizumi (as well as its entirety) fails to teach or suggest "an act of selectively identifying . . . data fields of state information corresponding to the instance." In fact, as discussed during the interview, it was not even asserted The cited portion of Koizumi (as well as its entirety) fails to teach or suggest either selectively identifying the data fields or that the depicted data fields are state information corresponding to the instance. Furthermore, the Applicants submit that the cited portion of Koizumi depict only the format of data structures and fail to teach or suggest any acts, whatsoever. Although the Examiner does not cite to McElroy, it, too, fails to teach or suggest "an act of selectively identifying . . . data fields of state information corresponding to the instance."

The Examiner cited to Koizumi Figure 10a, element 1011, for teaching "data fields representing less than all of the state information corresponding to the instance."<sup>8</sup> Koizumi Figure 10a, element 1011, however, recites "read data from receiving buffer" and is explained in the text as "data is read out of the receiving buffer 402 (step 1011)." The cited portion of Koizumi (as well as its entirety) fails to teach or suggest that data fields represent less than all of the state information corresponding to the instance. Further, both Koizumi and McElroy, both separately and in combination, fail to teach or suggest the requisite element.

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<sup>2</sup> MPEP § 2143; see also *In re Royka*, 490 F.2d 981 (CCPA 1974).

<sup>3</sup> Office Communication p. 3 (Dec. 27, 2006).

<sup>4</sup> Office Comm. p. 3.

<sup>5</sup> Koizumi col. 2 l. 5; col. 3 l. 39-40.

<sup>6</sup> Koizumi col. 2 l. 6; col. 3 l. 40-41.

<sup>7</sup> Koizumi col. 2 l. 7; col. 4 l. 22-23.

<sup>8</sup> Office Comm. p. 3.

The Examiner cited to Koizumi Figure 10b, element 1027, for teaching "an act of the consistency management module determining that the prompting event has occurred."<sup>9</sup> It should be noted, however, that Koizumi element 1027 is "supply voting error message to input buffer 406" and is explained in the text as "a voting error message is supplied to the queue of the input buffer 406 (step 1027)."<sup>10</sup> The Applicant respectfully submits that supplying an error message to an input buffer cannot be correctly equated with or considered to suggest a consistency management module determining that a prompting event has occurred.

The Examiner cited to Koizumi Figure 10b, element 1027, for teaching "in response to determining that the prompting event has occurred, an act of performing the consistency checking on the . . . data fields of state information."<sup>11</sup> Koizumi Figure 10b, element 1026, recites "initialized data consistency check area for voted FC" and is explained in the text as ". . . the data counters . . . are cleared to '0' (step 1026)."<sup>12</sup> Element 1026 of Koizumi is merely initializing data counters to zero in order to return to the beginning of a process to receive data from a buffer.<sup>13</sup> The Applicant respectfully submits that initializing data counters cannot correctly be equated with or thought to suggest "in response to determining that the prompting event has occurred, an act of performing the consistency checking on the . . . data fields of state information."<sup>14</sup>

Finally, the Examiner cited to McElroy col. 5 l. 33-59 for teaching "the selective identification of the data fields to be consistency checked is performed by one of the application instance or the consistency management module."<sup>15</sup> The cited portion of McElroy does state that "a selection from among the various inputs was made by software external to the Receiving Application."<sup>16</sup> But, it should also be noted that McElroy also states that "system verification is accomplished by comparing the results from one instance of the application executing on one processor with the results from another identical instance

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<sup>9</sup> Office Comm. p. 3.

<sup>10</sup> Koizumi Fig. 10b; col. 6 l. 29-32.

<sup>11</sup> Office Comm. p. 3.

<sup>12</sup> Koizumi Fig. 10b, element 1026; col. 6 l. 33-35.

<sup>13</sup> Koizumi col. 6 l. 35-36; Fig. 10a, element 1011.

<sup>14</sup> See claim 1.

<sup>15</sup> Office Comm. p. 4.

<sup>16</sup> McElroy col. 5 l. 38-39.

of the application executing on another processor."<sup>17</sup> In this regard, it should be noted that the present invention clearly teaches and claims that the data fields of state information which are identified correspond to *the instance* of an application program. McElroy, in contrast, requires results from *two instances* of redundant and identical applications. Because McElroy necessarily requires two redundant instances of identical applications, it clearly teaches away from the method as claimed which tests for consistency using only the data fields selected from within a particular application instance.

As discussed above, the elements of claim 1 are neither taught nor suggested by Koizumi and McElroy, either separately or in combination. Furthermore, both Koizumi and McElroy, both separately and in combination, fail to teach or suggest the elements which each reference, separately, fails to teach or suggest. Accordingly, the Applicants respectfully submit that a rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Koizumi in view of McElroy would be improper. Correspondingly, the Applicants submit that claim 1 is in condition for allowance and respectfully request the Examiner to allow the claim as recited.

Independent claims 17 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Koizumi in view of McElroy with the same rationale (at least in part) as claim 1.<sup>18</sup> Accordingly, in view of the above discussion, claims 17 and 25 should also be in condition for allowance and the Applicants respectfully request the Examiner to allow the claims as recited.

Independent claims 32 and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Koizumi in view of McElroy in further view of Choquier.<sup>19</sup> However, these claims comprise common elements with the above discussed claims and the rejection of these claims, as regards the common elements, follow substantially the same rationale as that of claim 1. As regards the citations to the same references as claim 1, the above discussion applies and Choquier, both separately and in combination with Koizumi and McElroy, fails to teach or suggest the corresponding elements. Furthermore, the Applicants submit that the motivation to combine the Choquier reference with either Koizumi or McElroy is absent.

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<sup>17</sup> McElroy col. 5 l. 23-26.

<sup>18</sup> Office Comm. p. 5.

<sup>19</sup> Office Comm. pp. 13, 15.

Choquier is directed toward a method of redirecting a client service session on one server to another application server by forwarding server information to the second server.<sup>20</sup> There would be no motivation to combine the Choquier reference with the consistency checking of Koizumi or the instruction counting for fault tolerance of McElroy.

In accordance with the above discussion, it would be improper to reject claims 32 and 35 under 35 U.S.C. § 103(a) as being unpatentable over Koizumi in view of McElroy in further view of Choquier. Accordingly, the Applicants respectfully request the Examiner withdraw the rejections of claims 32 and 35. The Applicants submit that claims 32 and 35 are in condition for allowance and, correspondingly, respectfully request the Examiner issue their allowance.

In view of the foregoing, Applicants respectfully submit that all other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicants acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicants reserve the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicants specifically request that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

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<sup>20</sup> See, generally, Choquier.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 26<sup>th</sup> day of June, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. D. Nydegger", written in a cursive style.

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